

REMARKS

Claims 1-27 are rejected as anticipated or obvious. Claim 1 is amended. Claims 1-24 and 26-27 are pending.

The claim amendments are made without prejudice to the Applicant filing one or more continuation or divisional applications with one or more of the original claims.

Claim 1 is amended to recite at least one of the first and second members has at least one opening extending through a wall thereof and spaced proximally from the distal end of the member.

Support for the amendment is found in Figure 2 (e.g. reference number 137 and reference numbers 235 and 235A), and at paragraph 69 and paragraph 76. No new matter is added.

Request for Reconsideration of Finality of Rejection.

It is respectfully urged that the Examiner has rejected Claim 26 on new grounds, and that this rejection is not properly final. The Examiner states that the Applicant's amendment necessitated the new ground(s) of rejection, and for that reason the action was made final. (See page 6 of Examiner's final rejection).

It is respectfully urged that the only amendment to Claim 26 made in the Applicant's response of December 21, 2006 was to correct "poriton" to "portion". Accordingly, it is respectfully urged that this correction of a typographical error did not necessitate a new ground of rejection, and the Examiner is requested to withdraw the finality of the rejection at least with respect to Claim 26.

102 Rejection of Claim 1/Obviousness rejection of Claims 12 and 14:

It is respectfully urged that Burney and Liegner do not anticipate Claim 1, because neither reference teaches each and every limitation of Claim 1 as required by the MPEP. However, Claim 1 is amended to recite (among other things) at least one of the first and second members has at least one opening extending through a wall thereof and spaced proximally from the distal end of the member. This amendment further distinguishes Claim 1 over Burney and Liegner for at least the reasons set forth below.

The Examiner admits that, with respect to Claims 12 and 14, Burney and Leigner fail to disclose limitations such as those in Claim 12 (wherein the first member comprises a plurality of openings through a wall of the first member...) or Claim 14 (wherein the second member comprises at least one opening through a wall of the second member...). However, the Examiner states that Claim 12 or 14 would be obvious because, according to the Examiner:

....., the applicant has failed to disclose that these limitations solve any problem or are for any particular purpose. Therefore, these limitations are deemed to be matters of design choice...  
(see page 5 of the Examiner's final rejection).

It is respectfully urged that, contrary to the Examiner's position, the Applicant's disclosure does explain how the limitations of Claims 12 and 14 (and so the amendment to Claim 1) can solve a problem and/or serve a purpose.

Referring to paragraphs 69 and 70 on Page 12 of the specification as filed, the Applicant explains that one or more openings 137 can extend through the wall of the cannula extension 132 to provide communication from the inner lumen 140 through the outer surface of extension 132. Further, paragraph 70 explains that the openings 137 can have a suitable area to provide sufficient air passage, such as to avoid the occurrence of a negative pressure inside the body cavity.

Additionally, paragraph 76 on page 15 explains that one or more lateral openings 235 in the cannula 233 can provide an air passage for air from cannula extension 132 through cannula 233 and into the internal body cavity in the event the distal end of the cannula is blocked (e.g. such as by being positioned against a body organ).

The Examiner agrees that Burney and Liegner fail to disclose the limitations in Claims 12 and 14. It is respectfully urged that the Applicants have clearly explained how the limitations in question in Claim 12, and 14 (and so also in amended Claim 1) can serve a purpose and/or solve a problem. Withdrawal of the obviousness rejection of Claims 12 and 14 is respectfully requested. Similarly allowance of Claim 1 and all claims depending therefrom is requested.

Claim 26:

Claim 26 is rejected as anticipated by 3,896,810 (Akiyama). It is respectfully urged that this rejection is improper for at least the following reasons.

Claim 26 recites an assembly comprising a vacuum device for providing an operative space within a patient; and a multicomponent device for providing access from a point external of the vacuum device to a point within the patient; the multicomponent device comprising detachable first and second members, the first member for providing a first portion of an access passageway, and the second member for providing a second portion of an access passageway.

It is respectfully urged that the Examiner has misapplied the Akiyama reference in rejecting Claim 26.

First, the Examiner states that Akiyama discloses vacuum device 28/32 for “providing an operative space within a patient..” It is respectfully urged that this is not the case. Akiyama discloses a syringe 28 for creating a negative pressure within a vacuum chamber 16 so that a suction structure 10 as well as guide sleeve and the cylinder 19 can be attached to a tumor wall by suction. (see column 4, lines 18-26 of Akiyama). An elongate drainage tube 31 is inserted into puncture tube 15 and is communicated with a second source 32 of negative pressure (See column 3, lines 63-68).

Accordingly, Akiyama does not teach a vacuum device for providing an operative space within a patient, as recited in Claim 26. In contrast Applicant’s disclosure at paragraph 86 explains that a vacuum device, such as vacuum shell 61, can be used to lift a patient’s body wall upward toward the shell. Referring to paragraph 89, the disclosure explains

As complete vacuum lift is obtained, the external surface of the body wall 60 can contact the internal surface of the vacuum shell 61 as shown in Figure 25. Due to this lift an operative space is created in the body cavity 67.

Accordingly, it is respectfully urged that it is not proper to interpret Akiyama as a vacuum device for providing an operative space in rejecting Claim 26.

Second, it is respectfully urged that the Examiner is incorrect in stating that Akiyama teaches detachable first (15) and second (10) members, the first member for providing a first portion of a passageway, and the second member for providing a second portion of a passageway. It is respectfully urged that the Akima's reference number 15 refers to a puncture tube, and that structure 10 is a "suction structure."

As shown in Figures 2, 3, and 4 of Akiyama, the puncture tube 15 extends completely through the structure 10. Even if one assumes for the sake of argument that tube 15 provides an access passageway, it is still not clear how structure 10 can be interpreted as providing a second portion of an access passageway, or otherwise provides an access passageway. The Examiner is respectfully requested to withdraw the rejection or explain/describe in a non-final rejection how and where structure 10 provides a second portion of an access passageway so that Applicant has a full and fair opportunity to respond.

Claim 27:

Claim 27 recites, among other things, a cannula and a cannula extension, ....wherein the cannula extension is releasably attachable to a proximal portion of the cannula such that the distal end of the cannula extension is positioned within the internal lumen of the cannula a predetermined distance from the open distal end of the cannula, and wherein the distal end of the cannula extension extends less than halfway into the internal lumen of the cannula.

It is respectfully urged that the rejection of Claim 27 as anticipated by Akiyama is improper for at least the following reasons.

First, it is respectfully urged that the structure 10 of Akiyama is not properly considered a "cannula". The Examiner's rejection states that Akiyama's structure 10 is a cannula, and the puncture tube 15 is a cannula extension. It is respectfully urged that tube 15 of Akima is not fairly considered a cannula extension of structure 10.

Second, even if the Examiner is correct in calling structure 10 a cannula, and tube 15 a cannula extension, the rejection is still improper. That is because the puncture tube 15 is not releasably

attachable to a proximal portion of the structure 10 such that the distal end of the puncture tube 15 is positioned within an internal lumen of the structure 10. See Figures 2, 3, and 4 of Akiyama, which clearly show the distal tip of tube 15 protruding from the structure 10.

Third, it is respectfully urged that, even if one assumes structure 10 is a cannula and tube 15 is a cannula extension, the distal end of the puncture tube 15 does not extend less than halfway into an internal lumen of the structure 10. As shown in Figures 2, 3, and 4 of Akiyama, when tube 15 is attached to the structure 10, the distal end of tube 15 passes through the full length of the structure 10.

Per Akiyama at col 3, lines 37-43:

It will also be noted from FIG. 2 that the puncture tube 15 has such a length that when thus *fully inserted* into the guide sleeve 12, it has its bias-cut lower edge 22 projecting sufficiently downwardly *out of* the lower end of the guide sleeve.

Italics added.

Column 5, lines 9-23 of Akiyama goes on to explain that once the puncture has been formed by the lower end 22 of the tube 15, the lower end 22 of the tube can be caused to retract into the guide sleeve 12 while leaving a tube 31 within the tumor.

Accordingly it is respectfully urged that the Examiner's interpretation of Akiyama is contrary to Akiyama's own teachings, and the rejection of Claim 27 should be withdrawn.

Reconsideration and allowance of the claims, is requested.

Respectfully submitted,

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